

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company	)	
	)	ICC Docket No. 10-0280
Proposed General Increase in Natural Gas Rates.	)	
	)	consolidated with
The Peoples Gas Light and Coke Company	)	
	)	ICC Docket No. 10-0281
Proposed General Increase in Natural Gas Rates.	)	

**INITIAL BRIEF**

On behalf of

**Interstate Gas Supply of Illinois, Inc.**

Christopher J. Townsend  
Christopher N. Skey  
Michael R. Strong  
DLA Piper LLP (US)  
203 N. LaSalle Street, Suite 1900  
Chicago, IL 60601  
christopher.townsend@dlapiper.com  
christopher.skey@dlapiper.com  
michael.strong@dlapiper.com

**September 22, 2011**

## **TABLE OF CONTENTS**

<b>I.</b>	<b><u>INTRODUCTION</u></b> .....	1
<b>A.</b>	<b>Overview/Summary</b> .....	1
1.	Commission Policy Favors Promoting Competition And Assigning Costs To Cost Causers .....	2
2.	The Commission Should Require The Companies To Eliminate Improper, Anti- Competitive Subsidies And Market Imbalances .....	3
<b>V.</b>	<b><u>OPERATING EXPENSES</u></b> .....	5
<b>C.</b>	<b>Contested Issues</b> .....	5
8.	Revenues .....	5
b.	Other Issues Relating To PEHS And PEPP, Including Staff Request For Investigation .....	5
c.	Warranty Products (Revenue and Non-Revenue) .....	6
<b>XI.</b>	<b><u>TRANSPORTATION ISSUES</u></b> .....	10
<b>C.</b>	<b>Administrative Charges</b> .....	10
1.	The Companies Charge “Generally Applicable” Administrative Fees And “Choices For You” Administrative Fees Inconsistently, Leading To Subsidies And Harming The Competitive Market .....	12
2.	The Commission Should Require The Companies To Charge “Choices For You” Administrative Fees To All Customers, Or, Alternatively, To Conduct A Detailed Cost Study Of Credits To “Choices For You” Customers To Remedy The Competitive Imbalance .....	14
<b>E.</b>	<b>Small Volume Transportation         Program (Choices for You<sup>SM</sup> or “CFY”)</b> .....	16
1.	Aggregation Charge .....	16
a.	All Eligible Customers Should Pay The Costs Associated With Having The Option To Enroll In “Choices For You” .....	17
b.	Alternatively, The Companies Should Be Forced To Allocate Gas Transportation Services In A Manner That More Accurately Reflects Cost Causation .....	22
2.	Purchase of Receivables (withdrawn) .....	25
<b>XII.</b>	<b><u>CONCLUSION</u></b> .....	26

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company	)	
	)	ICC Docket No. 10-0280
Proposed General Increase in Natural Gas Rates.	)	
	)	consolidated with
The Peoples Gas Light and Coke Company	)	
	)	ICC Docket No. 10-0281
Proposed General Increase in Natural Gas Rates.	)	

**INITIAL BRIEF OF INTERSTATE GAS SUPPLY OF ILLINOIS, INC**

Interstate Gas Supply of Illinois, Inc. (“IGS”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.800), respectfully submits its Initial Brief in the instant proceeding addressing the proposed general increase in electric rates of North Shore Gas Company (“North Shore”) and the Peoples Gas Light and Coke Company (“Peoples”) (collectively, the “Companies” or “Utilities”).

**I.**

**INTRODUCTION**

**A. Overview/Summary**

The Commission has an opportunity to further advance its long-standing policies favoring the development of the competitive market and requiring the assignment of costs to cost causers by eliminating anti-competitive subsidies that are harming the market and ratepayers. In its Final Order in the Companies’ 2009 Rate Case, the Commission acted to remove substantial barriers to competition by requiring the Companies to bring basic market rules into line with the best practices then available in Illinois. (*See* ICC Docket Nos. 09-0166/-0167 (cons.) Final Order dated January 21, 2010, at 241-272 (ordering workshops to fit Nicor Gas rules to the

Companies' service territories.) Many of the items discussed in those workshops already have been incorporated into the Companies' tariffs and practices. The one glaring failure of the Companies to abide by the terms of the 2009 Final Order relates to their complete failure to address the way in which they charge (and in some cases double-charge) administrative fees. In this proceeding, IGS respectfully requests that the Commission address the administrative fees issue by eliminating the subsidies that have been identified by IGS and Staff, and allowing the market to take the next significant step forward, to the benefit of all participants.

**1. Commission Policy Favors Promoting  
Competition And Assigning Costs To Causers**

The Commission has a strong, long-standing policy favoring competition. In the Commission's Order originally expanding Nicor Gas's small volume customer choice program to all eligible customers, the Commission held:

The expansion of the revised Program will provide all of Nicor Gas' customers with the ability to choose their gas supplier, which should facilitate gas service unbundling and foster competition. Hopefully, the increased competition will result in the development of new services and lower costs for customers.

(ICC Docket Nos. 00-0620/-0621 (cons.) Final Order dated July 5, 2001 at 13; *see also* ICC Docket Nos. 01-0469/-0470 (cons.) Final Order dated March 5, 2002 at 25 (approving a program because its effect is "enhancing the development of a competitive market").) The Commission further established the importance of its pro-competitive policy, noting its equality with the requirement that utilities recover their costs.

We agree that payment of overdue regulated charges is paramount to insure continued service to customers. However, it is of equal importance that suppliers remain in the market to allow competition to flourish.

(*Id.* at 80.) The Commission reiterated the importance of its pro-competitive policy in the Companies' 2007 Rate Case, in which the Commission refused to alter the payment priority rule that it ordered for Nicor, and later the Companies, stating that changing the priority rules would

have and “incrementally adverse impact on supply competition . . . [t]hat would be inconsistent with our policy of expanding customer choice.” (ICC Docket Nos. 07-0241/-0242 (cons.), Final Order dated February 5, 2008 at 304.) The Commission explained its continued “commit[ment] to encouraging competitive gas supply, so that customers enjoy the benefits competition can provide.” (ICC Docket Nos. 07-0241/-0242 (cons.) Final Order dated February 5, 2008 at 278.)

Similarly, the Commission has a longstanding policy of assigning costs to cost causers -- to the point that this policy has become axiomatic. (*See, e.g.*, ICC Docket Nos. 09-0166/-0167 (cons.) at 197, 198, 211 (summarily approving proposals due to being “consistent with cost causation principles”).) No party disputes that the Commission seeks to assign costs to the customers that cause those costs, and assign costs of programs to customers that benefit from the programs. (*See* ICC Dockets 07-0241/-0242 (cons.), Final Order dated February 5, 2008 Order at 163-4, 182 (noting policy of assigning costs of programs to customers that benefit from the programs); *See, e.g.*, Tr. 653:17-654:19; IGS Ex. 1.0 at 34:811-35:827.)

## **2. The Commission Should Require The Companies To Eliminate Improper, Anti-Competitive Cross Subsidies**

The existence of certain anti-competitive cross subsidies in connection with the Companies’ gas choice program known as “Choices For You” cannot be legitimately questioned. The evidence in the instant proceeding, including both the unchallenged testimony of IGS expert witness Vincent Parisi, and the admissions of witnesses at the Evidentiary Hearing, establish the way in which the market has been skewed. Given the Commission’s strongly-held policies favoring competition and accurate assignment of costs to cost causers and costs of programs to beneficiaries of those programs, the Commission should order specific modifications relating to the Choices For You program in this proceeding. The Commission can do so in four ways:

- **Generally applicable administrative fees should be charged in the same way that Choices For You administrative fees are charged -- preferably charging both to all eligible customers.** Currently, the Companies charge all customers (whether sales or Choices For You) for administrative functions that *only* support sales customers and are of no benefit to Choices For You customers. Conversely, the Companies only charge Choices For You customers for functions that exclusively support the Choices For You program. The current approach creates a market imbalance and a subsidy favoring sales customers paid for by Choices For You customers. The Commission can solve this issue by taking the same approach for both sets of administrative fees. This can be accomplished in one of two ways: (1) charge all customers for all administrative fees (as the Companies currently propose to do for generally applicable administrative fees), or (2) undertake a detailed cost analysis of generally applicable administrative fees and exclude costs supporting sales customers only from Choices For You customers (as the Companies currently propose for Choices For You administrative fees). Although both would be acceptable, in part due to the fact that the Companies do not track the cost information for each function supporting their proposed administrative fees, IGS recommends that the Commission in this case charge all administrative fees applicable to sales and Choices For You customers to *both* sales and Choices For You customers.
- **If the Commission does not charge Choices For You administrative fees to all eligible customers, the Companies should be required to undertake a detailed cost study to accurately establish the credits that Choices For You customers should receive.** The evidence establishes that Choices For You customers pay for costs associated with sales customers, but that eligible sales customers do not contribute to Choices For You costs. If the Commission decides not to charge all eligible customers the administrative costs associated with the Choices For You program, the Companies should be required to undertake a detailed cost study – the information provided by the Companies in this proceeding is inadequate to establish fair and accurate cost assignment. The detailed cost study would be used to establish the credit due back to Choices For You customers against costs that those customers do not cause, or identified areas of double billing.
- **Adopt Staff's recommendation to require an investigation into the Companies' support of their affiliate's warranty product.** Staff has presented thorough and convincing evidence that the Companies' support for their affiliate's warranty product requires additional investigation from the Commission.
- **Eliminate subsidies and inequitable access to utility services supporting non-commodity products.** Staff -- and the Companies -- provided significant evidence that the Companies subsidize their affiliate's warranty product. In addition, IGS pointed out additional competitive imbalances, most notably restricted access to the utility bill and no access to the Companies' solicitation apparatus. IGS recommends that the Commission require the Companies to provide access to the utility bill and solicitation services on a non-discriminatory basis to non-affiliates.

## V.

### **OPERATING EXPENSES**

#### **C. Contested Issues**

##### **8. Revenues<sup>1</sup>**

IGS and Staff raised several issues with regard to how the Companies interact with their affiliate, Peoples Energy Home Services (“PEHS”), which offers the “Pipeline Protection Plan” (“PPP”), a warranty product. Specifically, IGS and Staff established that the Companies provide support to PEHS’s PPP product, which creates market imbalances and harms ratepayers. Although competitive markets generally put downward pressure on prices, the market imbalances in the warranty product market have prevented the development of a truly competitive market for warranty products in the Companies’ service territories. The subsidies causing the market imbalances also harm ratepayers, who are forced to subsidize a product of the Utilities’ affiliate and forego potential revenues from both the affiliate and non-affiliates. (*See, e.g.*, IGS Ex. 2.0 at 27:650-28:668, 29:702-30:713 (summarizing the subsidies identified by Staff.) Eliminating the subsidies will both allow a competitive market to develop and benefit ratepayers by increasing the Companies’ non-ratepayer revenue, thus reducing the amount recovered from ratepayers. The Commission can accomplish this goal by requiring the Companies to offer access to billing and solicitation services on a non-discriminatory basis to non-affiliates.

##### **b. Other Issues Relating to PEHS and PPP, Including Staff Request for Investigation**

Staff recommends that within 90 days of the Final Order in the present dockets the Companies should be required to petition to continue providing support to PEHS, the

---

<sup>1</sup> This section of the briefing outline also addresses non-revenue issues related to the Companies’ treatment of warranty products.

Companies' affiliate that provides a warranty product. (*See, e.g.*, Staff Ex. 9.0 at 5:96-99; Staff Ex. 18.0 at 16:356-358; Tr. At 769:11-770:18.) Staff expert witness Mr. Sackett provided ample evidence that the Companies subsidize their affiliate by undercharging for solicitation and repair services and not charging at all for solicitation. (*See, e.g.* Staff Ex. 9.0 at 36:819-38:852 (solicitation services) 38:857-40:897 (repair services); Staff Ex. 18.0 at 24:522-25:557, 26:569-575 (repair services).) Mr. Sackett also appropriately questioned whether the services provided by the Companies might not even be authorized under the Companies' Affiliated Interests Agreement. (*See id.*) In fact, an IGS Data Request led to the Companies discovering an error, and admitting that they have been undercharging their affiliate for billing services. (*See* IGS Cross Exs. 5-6 (Companies' Responses to Data Request IGS 4.03); *see also* Staff Ex. 18.0:25:559-25:567 (citing to the Companies' Responses to Data Request IGS 4.03).) In addition, Mr. Sackett provided evidence that the Companies were not truthful with Staff regarding the warranty product. (*See* Staff Ex. 9.0 at 40:901-910.) Based on the voluminous evidence that the Companies are subsidizing their affiliate, IGS supports Staff's recommendation and respectfully requests that the Commission require the Companies to initiate a proceeding in which the Commission can further investigate the way in which the companies support their affiliate's warranty products.

**c. Warranty Products (Revenue and Non-Revenue)**

The Companies provide their affiliate PEHS with significant subsidies that suppress the development of a competitive market for warranty products. IGS respectfully requests that the Commission require the Companies to eliminate those subsidies. As described below, the best way to remove the subsidies and level the competitive playing field is to allow non-affiliates access to the Companies' billing and solicitation assets on a non-discriminatory basis.



IGS witness Mr. Parisi testified to the nature and benefits of warranty products:

Warranty products provide customers with protection on the customer-owned portions of utility lines. Utility line warranty products provide repair or replacement service for customers when the customer-owned portion of the utility lines fails due to normal wear and tear, which is typically not covered by the utility or by standard homeowner's insurance. Within the family of utility line protection warranty products, there are a myriad of different iterations of price, coverage, and design, but the essence remains protection against utility line related damage.

(IGS Ex. 2.0 at 24:576-583.) Undoubtedly, warranty products provide interested customers with a valuable service; the issue presented to the Commission is preventing the Companies from continuing to subsidize PEHS. IGS respectfully requests that the Commission grant the following relief:

- **Prevent the Utilities' affiliate from having exclusive or superior access to the utility bill.** (See IGS Ex. 2.5-2.7.) Access to the utility bill increases the likelihood that customers will enroll, simplifies the enrollment process, is more convenient for the customer, and avoids customer confusion. (See IGS Ex. 2.0 at 26:614-639.) In turn, those outcomes have the secondary effect of lowering acquisition costs, which allow competitors to charge less to customers. (See IGS Ex. 2.0 at 27:642-644.) Equal access to the bill is the "most important factor in a properly operating competitive market for warranty products," and lack of equal access can prevent a market from developing. (IGS Ex. 2.0 at 25:587-599.) To the extent that the Companies might allow non-affiliates to access the utility bill on more restrictive terms -- such as only allowing access to the bills of current Choices For You customers by Choices For You suppliers, a restriction that PEHS does not appear to face -- more restrictive access still harms the competitive market by denying non-affiliates the benefits of utility bill access. (See IGS Cross Exhibits 1 and 2 (the Companies' Responses to Data Request IGS 4.01); IGS Ex. 2.0 at 25:591-599 (discussing the effects of unequal bill access).)
- **Prevent the Utilities from providing free or below-market rate solicitation and repair services to their affiliate.** As described in Section V.C.8.b above, Staff witness Mr. Sackett provided a thorough and detailed explanation of the ways in which the Companies subsidize PEHS through under billing for solicitation and repair fees. (See, e.g. Staff Ex. 9.0 at 36:819-38:852 (solicitation services) 38:857-40:897 (repair services); Staff Ex. 18.0 at 24:522-25:557, 26:569-575 (repair services).) Both Staff witness Mr. Sackett and IGS witness Mr. Parisi agree that subsidies for repair services should be eliminated. (See, e.g., Staff Ex. 9.0 at 38:869-39:873; IGS Ex. 2.0 at 29:702-703.) Mr. Parisi agreed that the subsidies identified by Mr. Sackett were harming the competitive marketplace. (See IGS Ex. 2.0 at 27:650-653, 28:665-668, 29:702-703.) IGS recommends that access should be provided on equal terms between affiliates and non-

affiliates, due to the unique and impossible-to-duplicate nature of some of the solicitation opportunities the Companies provide to PEHS. (*See* IGS Ex. 2.0 at 28:673-29:698.)

- **Accept the Companies' proposal to increase the billing charge to PEHS.** In response to a Data Request from IGS, the Companies, to their credit, appear to have undertaken a study of billing costs that has resulted in higher costs to PEHS -- and, in turn, a higher credit for ratepayers. (*See, e.g.*, NS-PGL Ex. 38.0 at 11:222-225.) IGS recommends that the Commission approve this change.

**(1.) The Commission Should Prevent  
The Utilities' Affiliate From Having  
Exclusive Or Superior Access To The Utility Bill**

IGS provided substantial evidence that access to the utility bill is of critical importance for the development of a competitive market. As IGS witness Mr. Parisi testified:

The most important factor in a properly operating competitive market for warranty products is permitting competitors access to the utility bill, so competitors enjoy the same access to the utility bill that is provided to utility affiliates. In other words, utility affiliates and their competitors should have the same access to using the utility bill to invoice customers for services.

(IGS Ex. 2.0 at 25:587-591.) As a result, IGS recommends that the Commission compel the Companies to provide access to the utility bill for non-affiliates on substantially similar terms as the Companies provide access to the bill to their affiliates. A similar approach was recommended by Staff and consented to by Nicor Gas in the ongoing Nicor Merger proceeding (*See* IGS Cross Ex. 15 (excerpt from Staff witness Sackett's testimony); IGS Cross Ex. 16 (Staff-Nicor Gas stipulation); *see also* Tr. 767:3-12 (Staff witness Mr. Sackett acknowledging position in Nicor Merger proceeding).)

**(2.) The Commission Should Prevent The  
Utilities From Providing Free Or Below-Market  
Rate Solicitation And Repair Services To Their Affiliate**

With regards to solicitation, IGS witness Mr. Parisi points out that it is important but not sufficient for the Companies to charge their affiliate the full costs of solicitation. Exclusive access for the affiliate (even if fully paid for) leads to additional inequities:

Simply charging the affiliate for the access the Companies provide to their solicitation infrastructure is insufficient because that approach still allows the Companies' affiliate to have unique and irreproducible solicitation opportunities that non-affiliates cannot recreate at any price. For example, if the Companies refuse to allow other providers the opportunity to connect with customers making moving calls, non-affiliates cannot create their own moving calls.

(IGS Ex. 2.0 at 28:673-678.) Inaccessibility of these additional solicitation opportunities harms non-affiliates' ability to compete with the Companies' affiliate. (*See* IGS Ex. 2.0 at 28:678-682.)

**(3) The Commission Should Accept The Companies' Proposal To Increase The Billing Charge To PEHS**

The higher billing costs provide a good example for the dual positive effects for ratepayers resulting from elimination of subsidies to the Companies' affiliate. First, removing subsidies and barriers to entry -- such as bill access or provision of solicitation on equal terms -- allows a competitive market to develop, putting downward pressure on prices and fostering innovation and a variety of products. (*See* IGS Ex. 2.0 at 31:749-753.) Second, when discounts for the Companies' affiliates are removed -- and non-affiliates are allowed to pay for access to the same services on a non-discriminatory basis -- the utility potentially increases its revenue, thus reducing its revenue requirement and benefitting all ratepayers, whether they choose to purchase a warranty product or not. (*See e.g.*, NS-PGL Ex. 38.0 at 11:222-225 (acknowledging greater credit for ratepayers after upward adjustment of billing charge to PEHS), Staff Ex. 9.0 at 40:893-897 (describing effect of increasing repair revenues).)

IGS respectfully recommends that the Commission require the Companies to eliminate the aforementioned subsidies by requiring the Companies to provide access to the Companies' billing and solicitation systems to non-affiliates on a non-discriminatory basis. A similar approach was recommended by Staff and consented to by Nicor Gas in the ongoing Nicor Merger proceeding (ICC Docket No. 11-0046) (*See* IGS Cross Ex. 15 (excerpt from Staff witness Sackett's testimony); IGS Cross Ex. 16 (Staff-Nicor Gas stipulation).)

## **XI.**

### **TRANSPORTATION ISSUES**

The record evidence establishes that the Companies' proposed administrative charges create subsidies favoring sales customers at the expense of transportation customers, particularly Choices For You (small volume) transportation customers. IGS respectfully requests that the Commission order the Companies to recover administrative costs on an equitable basis that removes the inappropriate burden currently placed on Choices For You (and other transportation) customers and that properly spreads costs across all benefitting customers.

The subsidies come from two charges: the "general" administrative fees charged to both sales and transportation customers within a rate class -- which are described in Section XI.C below -- and the "Choices For You" administrative fees that are charged to Choices For You suppliers and their customers -- which are described in Section XI.E.1 below. IGS recommends that the Choices For You administrative fees (discussed in the "Aggregation Charge" Section) be charged to all eligible customers, the same way that administrative fees (discussed in the "Administrative Charges" Section) currently are recovered. However, to the extent that the Commission does not accept IGS's recommendation, IGS alternatively requests that the Commission require the Companies to identify and provide a credit for costs that Choices For You customers inappropriately pay; that is, the generally applicable administrative fees and Gas Transportation Service charges improperly recover costs from Choices For You customers for services that they do not receive.

#### **C. Administrative Charges**

This subsection discusses the "general" administrative fees that the Companies charge to both sales and transportation customers within a rate class. The Companies propose

administrative charges for Service Classes 1 and 2 that improperly recover costs caused by sales customers from both sales and transportation customers, including Choices For You customers. The improper cost recovery takes three forms: (1) recovery of costs caused by sales customers, as testified to by Companies' witness Mr. McKendry, (2) recovery of costs that the Companies cannot establish that Choices For You customers caused, and (3) recovery of costs for programs that benefit all customers from only Choices For You customers (through charges to their suppliers) rather than from all customers eligible to take service under the Choices For You program. The improper subsidization of sales customers by Choices For You customers harms the competitive market, which is contrary to the Commission's policies favoring competition and assigning costs to their causers. The best solution to this improper subsidization is to align recovery of generally applicable and Choices For You administrative fees, and the most efficient way to align the recovery of those administrative fees is to have all administrative fees recovered from all eligible customers.

As a component of appropriate cost recovery, IGS witness Mr. Parisi noted the importance of consistency between Choices For You administrative fees and Large Volume Transportation administrative fees:

If a full unbundling of the costs occurs, it will be necessary to ensure not only the Choices For You customers are properly treated, but also that the larger transportation customer charges will be examined to ensure they are not paying twice for costs, or paying for costs they are not creating. Although IGS is focused on the residential and small commercial markets for purposes of this testimony, the competitive market works best when no customer group is forced to subsidize another customer group.

(IGS Ex. 2.0 at 19:460-466.) Therefore, IGS respectfully requests that the Commission order the Companies to charge Large Volume Transportation customers in a consistent manner with any changes to how Choices For You customers are charged.

**1. The Companies Charge “Generally Applicable” Administrative Fees And “Choices For You” Administrative Fees Inconsistently, Leading To Subsidies And Harming The Competitive Market**

Under their current proposal, the Companies recommend recovering administrative charges for sales and choice customers in contradictory ways, resulting in Choices For You customers subsidizing sales customers.

During the Evidentiary Hearing, Companies’ witness Mr. McKendry acknowledged multiple instances in which costs caused by sales customers are recovered through base rates, while costs for similar functions for Choices For You customers are recovered through the Choices For You administrative charge. The upshot is that Choices For You customers are paying twice for certain functions, while sales customers are paying only once:

- **Call center.** If a sales customer has a question related to the PGA, the customer’s call goes through the call center that takes “general calls,” whose costs are recovered through generally applicable administrative fees; however, Choices For You questions are routed to the Gas Transportation Department, whose costs are recovered through the Choices For You administrative fee. (*See* Tr. 674:9-675:17; *see also* IGS Cross Ex. 11 (the Companies’ Responses to Data Request IGS 3.05).)
- **Bill generation.** Although commodity-related billing costs are recovered through base rates, costs for Choices For You billing are recovered through the Choices For You administrative fee. (*See* Tr. 675:18-677:12; *see also* IGS Cross Ex. 11.)
- **Bill reconciliation.** Similarly, costs incurred to reconcile commodity-related bills are recovered through base rates, while costs for reconciling Choices For You bills are recovered through the Choices For You administrative fees. (*See* Tr. 678:5-21; *see also* IGS Cross Ex. 11.)

The inequity is explicit: although sales-specific charges are recovered through base rates (*i.e.* administrative fees to all customers, including Choices For You customers), Choices For You-specific costs are borne only by Choices For You customers. The Choices For You customers do not receive any credit associated with the components of sales-specific services recovered

through base rates. As a result, the Choices For You customers are improperly billed twice for certain services (once through base rates and then again through the Choices For You charge).

In addition to Mr. McKendry's repeated admissions about this inequitable double recovery of costs, IGS Cross Ex. 11 contained many additional examples where commodity-related charges are recovered from all customers -- both sales *and choice* -- while similar Choices For You-related charges are recovered only from Choices For You customers. (*See* IGS Cross Ex. 11; *see also* IGS Ex. 1.0 at 42:1000-43:1015 (identifying apparent overlap).) As a result, Choices For You customers are forced to subsidize sales customers' customer support functions by paying a share of sales customers' costs that Choices For You customers simply do not incur. (*See, e.g.* IGS Ex. 1.0 at 42:1000-43:1015.)

In addition to the examples of costs incurred in support of sales customers that are paid by Choices For You customers and similar instances identified in IGS Cross Ex. 11, Choices For You customers pay additional costs that those customers do not cause. For example, no party disputes that Choices For You customers do not cause commodity-related uncollectable costs. (*See, e.g.* PGL Ex. 12.0 at 14:313-15:317; NS Ex. 12.0 at 13:273-278; *see also* IGS Ex. 1.0 at 36:878-39:888 (citing with approval Peoples and North Shore testimony).) IGS has also established that Choices For You customers do not create non-commodity-related uncollectable costs. (*See, e.g.,* IGS Ex. 1.0 at 38: 906-918, 39:944-40:966; IGS Ex. 2.0 at 29:471-482.) Simply stated, due to payment priority rules, Alternative Retail Gas Suppliers ("ARGS") simply do not get paid unless the Companies' non-commodity charges are paid. (*See* IGS Ex. 1.0 at 39:944-40:950.) As a result, ARGS cannot afford to take on customers without excellent credit, and are forced to drop customers who do not make timely and full payments. (*See id.* at 40:950-953.) Notably, the Companies admitted that they do not track the uncollectable rates of Choices

For You customers, and IGS offered un rebutted evidence that Choices For You customers create *de minimis* non-commodity-related uncollectable costs. (See, e.g., IGS Cross Exs. 17 and 18 (the Companies' Responses to IGS Data Requests 3.01 and 3.02, respectively.) Thus, due to the evidence that Choices For You customers cause insignificant non-commodity-related uncollectable costs, those costs also should not be recovered through the generally applicable administrative charge without a credit to Choices For You customers.

IGS has presented substantial evidence that the Companies' administrative fees collect costs from Choices For You customers that Choices For You customers simply do not cause. The Companies both double-bill Choices For You customers for substantially similar services, and fail to remove costs caused by sales customers. As a result, Choices For You customers are currently subsidizing sales customers, which in turn harms the competitive market contrary to the Commission's policy favoring competition.

**2. The Commission Should Require The Companies To Charge "Choices For You" Administrative Fees To All Customers, Or, Alternatively, To Conduct A Detailed Cost Study Of Credits To Choices For You Customers To Remedy The Competitive Imbalance**

IGS respectfully requests that the Commission require the Companies to charge all administrative fees to all customer classes benefitting from the underlying functions, or, in the alternative, require the Companies to undertake a detailed study of the cause and magnitude of the costs that the Companies currently recover through administrative fees so Choices For You customers can receive a credit. In light of the inclusion of sales-related costs and other costs not caused by Choices For You customers and the resulting burden on Choices For You customers, IGS witness Mr. Parisi proposed mitigating this imbalance as follows:

The Commission should require the Companies to take a consistent approach to administrative fees -- either take a detailed look into cost causation for every



employee and function, or spread the costs across all customers who can avail themselves of the benefits.

(IGS Ex. 2.0 at 23:547-550.) Harmonizing the approaches of these two administrative fees will remove a major market inequity and what amounts to a penalty for Choices For You customers, who currently pay all of their own costs and also sales customers' costs that Choices For You customers do not cause.

Although a detailed study of cost causation would be most consistent with the Commission policies of promoting competition and assigning costs to their causers, such a study would require the Companies to develop specific cost information about its administrative functions supporting sales or Choices For You customers. (*See* IGS Cross Ex. 9 (the Companies' Responses to Data Request IGS 3.08); Tr. 660:6-661:3, 665:11-15, 666:13-19 (Companies' witness Mr. McKendry discussing failure to break down costs by function).) As evidenced by the Companies inability to provide meaningful responses to many of IGS' discovery requests, it does not appear the Companies have yet collected, much less developed, the information necessary to conduct such a study. (*See, e.g.* IGS Cross Exs. 11, 12 and 13.) Thus, IGS recommends that the Commission adopt the compromise position set forth by IGS witness Mr. Parisi:

[A] simpler and more practical approach to resolve this inconsistency would be to eliminate the administrative charge for both Choices For You and transportation customers, therefore eliminating any need at this time to further unbundle rates.

(IGS Ex. 2.0 at 23:552-555.) With this compromise, the Companies can collect and develop unbundled cost information for the Companies' future rate cases, while the Commission can make an immediate impact in support of its policies favoring competition and assigning costs to causers. Additional justifications for charging Choices For You administrative fees to all eligible customers are further described in Section XI.E.1.b below.

If the Commission does not accept IGS's proposal to charge Choices For You administrative fees to all eligible customers, IGS recommends a detailed cost study that will ultimately result in a credit for Choices For You customers against the generally applicable administrative fees. IGS witness Mr. Parisi testified about the structure of this credit:

Just as Peoples and North Shore properly addressed the allocation of the Uncollectable Account by providing a credit to Choices For You customers, it should also provide a credit against the Choices For You customer's (non-Choices For You) administrative fee. The value of this credit should include all costs, including capital, direct O&M, and indirect O&M related to the duplicated or substantially similar functions.

(IGS Ex. 1.0 at 43:1018-1023.) The duplicated costs include both the costs incurred in support of sales customers (and recovered through the generally applicable administrative fee) that are recovered for Choices For You customers through the Choices For You administrative fee and any charges unique to sales customers. (*See, e.g.* Tr. 674:9-677:12, 678:5-21; IGS Cross Ex. 11.) Although such a review will require additional investigation, it is necessary to avoid subsidies that favor sales customers at the expense of Choices For You customers.

#### **E. Small Volume Transportation Program (Choices for You<sup>SM</sup> or "CFY")**

This subsection discusses the "Choices For You" administrative fees that are charged to Choices For You suppliers and their customers.

##### **1. Aggregation Charge**

It is a generally-understood ratemaking principle that the Commission seeks to set rates that charge customers: (1) only for costs attributable to the customers, and (2) only once for the same costs. As discussed above, the way in which the general administrative fee is charged to all customers (both sales and Choices For You customers) is inconsistent with how Choices For You administrative fees are charged. (*See supra* at Section XI.C.) The Aggregation Charge – also referred to as the "Choices For You" administrative fee -- creates improper subsidies in two

ways: it is only recovered from Choices For You suppliers (and thus passed through only to Choices For You customers), and it is allocated based on a crude labor-related proxy rather than actual cost causation associated with the various services provided. (*See, e.g.* IGS Cross Exs. 12 and 13).

IGS recommends that the Commission charge the Choices For You administrative fees to all customers who have the opportunity to take advantage of the Choices For You program.. All eligible customers benefit from the existence and ongoing operation of the Choices For You program; therefore, all eligible customers (i.e., all customers who have the opportunity to participate in the program) should pay those costs. (*See infra* at Section XI.E.1.a.) However, if the Commission instead chooses to accept the Companies’ proposal to charge only Choices For You customers Choices For You administrative fees, IGS recommends that the Commission carefully examine the fees charged to Choices For You customers that are caused by sales or Large Volume Transportation customers, and direct the Companies to immediately stop charging Choices For You customers for those costs or to develop a credit based on cost causation principles, segregating Choices For You costs from other Gas Transportation Department costs. (*See infra* at Section XI.E.1.b.).

**a. All Eligible Customers  
Should Pay The Costs Associated With  
Having The Option To Enroll In “Choices For You”**

Choices For You costs should be charged to all customers who have the opportunity to take advantage of the Choices For You program, because all of those eligible customers benefit from having the option to take service under the program. This approach to cost recovery is consistent with the methodology that the Commission has approved for the Nicor Gas choice program and that the Commission directed the Companies to consider implementing in the workshops following the Companies’ 2009 Rate Case. In this proceeding, IGS has developed

substantial additional evidence, demonstrating that all eligible customers do benefit from the Choices For You program; and the Companies have confirmed that evidence. (*See, e.g.*, IGS Ex. 1.0 at 31:740-743, 33:788-794; Tr. at 692:6-693:15.) Although the Companies and Staff continue to assert that the Companies should charge only Choices For You customers, neither party presented evidence to suggest that eligible customers do not benefit, or that Choices For You administrative costs should be treated any different than other programs where all eligible customers are charged for similar costs given the benefits Choices For You provides to all customers.

Collection of administrative costs from all eligible customers has previously been approved by the Commission. In fact, in Nicor Gas's most recent rate case, the Commission authorized recovery of Nicor's administrative costs associated with its choice program from all eligible customers. (*See* ICC Docket No. 08-0363, Final Order dated March 25, 2009 at 128.) In the Companies' 2009 Rate Case, the Commission identified the Nicor Gas model as the standard which the Companies should either adopt or explain why the approach was not being adopted:

The Commission directs the Utilities to come to the workshops prepared to discuss the Nicor program, as presented by Mr. Crist. The Utilities should be prepared to explain which parts are appropriate for their program, which are not, and why they are not. For those parts of the Nicor program that the Utilities believe are not appropriate for their program, they will come prepared to present alternatives to address the issues raised by RGS.

(ICC Docket No. 09-0166/-0167 (cons.) Final Order dated January 21, 2010 at 253, *see id.* at 260.) To be clear, recovering small volume transportation program costs from all customers was one of the items that RGS and RGS witness Mr. Crist identified from the Nicor program and recommended that the Companies adopt. (*See, e.g., id.* at 258.) Nevertheless, the Companies did not resolve this issue in the workshop process, and proposed in the present docket to continue

“business as usual” to recover Choices For You costs from Choices For You suppliers. (*See* Tr. 650:21-653:16.)

IGS has presented substantial evidence explaining why it is appropriate for the Choices For You administrative costs to be charged to all eligible customers. For instance, IGS explained that all eligible customers benefit from the existence of Choices For You by having the option switch to a competitive supplier at any time. (*See, e.g.* Tr. 692:14-693:10 (Cross examination of Companies’ witness Mr. McKendry); IGS Ex. 1.0 at 33:788-34:807.) The benefit to sales customers of having the Choices For You program available was acknowledged by the Companies’ witness Mr. McKendry:

Q. Let's take an average residential, small commercial customer. That's a sales customer, okay?

A. Okay.

Q. And that sales customer can become a Choices for You customer at any time, right?

A. Right.

Q. It's an option that the Utilities have provided to that customer, right?

A. Right.

Q. Do you agree that the Companies have budgeted for Gas Transportation Services Department costs such that if additional customers switch from sales to Choices for You, the Companies would be able to serve those customers?

A. That's right.

Q. So the Companies have budgeted and planned for the contingency that additional sales customers will become Customer Choice customers, right?

A. Correct.

Q. And there's a cost associated with the Utilities providing eligible customers the option to be able to switch, right?

A. Correct.

(Tr. 692:4-693:5.) As Mr. McKendry properly conceded, as a general matter, customer groups who benefit from a particular program should be allocated a fair share of the costs.

Furthermore, charging Choices For You fees only to Choices For You customers (or their suppliers) amounts to an anti-competitive switching fee. (*See* IGS Ex. 1.0 at 33:794-34:802.) As IGS witness Mr. Parisi summarized:

All customers with the option to participate on the Choices For You program are being provided with something of value as a result of the utilities implementing a customer choice program – they are given the option to change suppliers and to take advantage of price and product offers from the competitive market. . . . In addition, if and when a particular customer does decide to choose, an additional cost barrier (in essence, a switching fee) is removed.

(*Id.* at 33:788-34:796.) Requiring the Companies to remove the cost barrier to switching would be consistent with the Commission’s policy favoring competition, and consistent with its past practices of rejecting proposals that are inconsistent with that policy. (*See, e.g.*, ICC Docket 70 Nos. 07-0241/-0242 (cons.), Final Order dated February 5, 2008 at 304; ICC Docket Nos. 00-0620/-0621 (cons.) Final Order dated July 5, 2001 at 80 (noting the importance of considering the impact on the competitive market in setting market rules) discussed in Section I.A.1 *supra.*)

In addition, charging Choices For You administrative fees to all eligible customers would be consistent with how the Companies requested -- and the Commission approved -- recovery of other costs. For example, the Companies have a call center that any customer can call, but not all customers do; nevertheless, the Companies bill all eligible customers for access to the call center. (*See* IGS Ex. 1.0 at 35:828-856 (quoting cross examination from the Companies’ 2009 Rate Case.) Similarly, the Commission summarized the Companies’ own argument with regard to charging energy efficiency costs to all eligible customers in the Companies’ 2007 Rate Case:

Staff considers the [Energy Efficiency Program] unfair, the Utilities note, because not everyone will necessarily participate. [citation omitted]. In the Utilities view,

however, this is a rather small argument. Many things work this way, including almost everything paid for by taxes. Taxes pay for roads that many citizens will never drive on, and fire fighters that most people, thankfully, may never call. Does this make taxes —unfair? Surely Staff would not take the argument quite that far. Given all the positive effects of a well-designed energy efficiency program, the Utilities argue, it should not be considered so unfair as to be not worth undertaking **as long as the benefits are equally available to all customers.**

(ICC Dockets 07-0241/-0242 (cons.), Final Order dated February 5, 2008 Order at 163-4 (quoted in IGS Ex. 1.0 at 34:814-825) (emphasis added).)

Nevertheless, the Companies have resisted charging Choices For You costs to all eligible customers. This runs counter to Mr. McKendry's admission that all eligible customers benefit from the availability of Choices For You. Neither Mr. McKendry nor Companies' witness Ms. Grace provided any evidence that eligible customers did not benefit beyond unsupported assertions that only current Choices For You customers benefit from the Choices For You program. (*See, e.g.*, NS-PGL Ex. 28.0 at 41:893-906 (Ms. Grace's rebuttal); NS-PGL Ex. 45.0 at 28:603-29:606 (Ms. Grace citing to own rebuttal testimony).) Staff witness Mr. Sackett makes a similar assertion. (Staff Ex. 18.0 at 7:124-126 (cited by NS-PGL Ex. 45.0 at 29:606).) However, like the Companies, Mr. Sackett provides no proof to counter IGS's evidence (which the Companies confirmed) that all eligible customers -- including sales customers who are eligible to switch -- benefit from the Choices For You program.

The Companies' assert that certain S.C. 2 customers are eligible for both Choices For You and the Large Volume Transportation program and thus might be billed for both. (*See* NS-PGL Ex. 45.0 at 29:607-610.) However, the Companies' argument does not rebut the evidence IGS has presented that S.C. 2 customers do receive benefits from the Companies offering the option of taking service under the Choices For You program. At best, the Companies' argument supports a future discussion for why the Commission might consider a credit or set-off for

certain S.C. 2 customers against Choices For You administrative fees. IGS notes, however, that none of the parties have quantified the benefits received by S.C. 2 customers, so the record does not support a credit at this time.

IGS respectfully requests that the Commission direct the Companies to charge Choices For You fees to all eligible customers. The Commission approved Nicor Gas's proposal to charge all eligible customers, and the Commission ordered the Companies to consider the issue in the workshops between the present case and the Companies' 2009 Rate Case; the Companies have failed to do so. IGS offered, and the Companies confirmed, evidence that all eligible customers benefit from the ongoing operation of the Choices For You program. IGS also provided evidence of the positive effect on the competitive market for charging Choices For You costs to all eligible customers.

**b.      Alternatively, The Companies Should Be  
Forced To Allocate Gas Transportation Services In A  
A Manner That More Accurately Reflects Cost Causation**

If the Commission does not accept IGS's proposal to charge Choices For You fees to all eligible customers, IGS respectfully requests that the Commission direct the Companies to allocate its Gas Transportation Services ("GTS") Department costs based on cost causation principles. The Companies have admitted that they: (1) did not consider capital, non-labor direct O&M, or indirect O&M in their allocation, and (2) the Companies have not identified the costs incurred for any individual GTS function. (*See, e.g.*, Tr. 666:20-668:4 (did not identify allocation of capital, non-labor direct O&M, or indirect O&M); Tr. 666:13-19 (have not identified costs for functions); IGS Cross Exs. 12 and 13 (same).) Instead, the Companies rely on a labor-based allocator that the Companies admitted did not reflect all aspects of cost causation. (*See, e.g.* Tr. 682:6-684:16.) If the Commission does not charge both generally



applicable administrative fees and Choices For You administrative fees to all eligible customers, a detailed cost-causation analysis is necessary for both groups of costs.

IGS witness Mr. Parisi explained the issue:

It must be that the Companies assert that their supply personnel spend at least some portion of their time providing services that are equally applicable to customers taking supply from the Companies and customers taking supply from ARGSS. That begs the question: what portion? Knowing what portion is equally applicable to both sets of customers and which portion is not equally applicable would permit an accurate allocation of the costs generated by those supply personnel. Until the Companies provide that allocation and set charges accordingly, however, it seems clear that, in fact, the Companies are double charging Choices For You Customers for services that those customers do not receive from the Companies.

(IGS Ex. 2.0 at 19:447-456.) In contrast to the generally applicable administrative fees charging Choices For You customers with sales costs, the Companies appear to have at least made an effort to allocate Gas Transportation Services department costs. However, the Companies' attempt is flawed and does not reflect cost causation.

Simply put, the Companies provide little evidence about actual cost causation in the Gas Transportation Services. When asked specifically for the basis for allocating Gas Transportation Services costs to Choices For You administrative fees, the Companies stated that they broke down costs based on the number of employees performing tasks supporting Choices For You. (*See* IGS Cross Exs. 12 and 13 (the Companies' Responses to Data Requests IGS 6.03 and 5.02); Tr. 680:15-682:2.) However, the Companies freely admitted that they do not collect detailed cost causation data including capital costs, direct O&M other than labor, or indirect O&M. (*See, e.g.,* Tr. 667:12-668:4.) The Companies did not provide a separate allocation factor for any of those costs, and failed to provide any information about how the Companies believe those costs are caused. (*See, e.g.* Tr. at 682:3-684:16.) More to the point, the Companies did not have any testimony about how capital, non-labor O&M, and indirect O&M were segregated so that only

the customer groups causing those costs would be charged. (*See, e.g.*, Tr. 689:15-690:7.) The Companies' expert witness Mr. McKendry flatly stated on cross examination that despite not being separately allocated, non-labor direct O&M and indirect O&M costs were recovered from Choices For You customers. (*See* Tr. 667:12-668:4.)

Even if the Commission were to accept the Companies' implied position that a labor allocator (based on number of employees) is an appropriate allocator for all Gas Transportation Services costs, the Companies admitted that there are not separate employees conducting the different functions, but that the Companies have provided what amounts at best to only a "guesstimate" about employees' time, without any supporting documentation. (*See* Tr. at 672:17-674:3.) Although it is possible (though unlikely) that labor is an appropriate allocator, the Companies do not support the counter-intuitive conclusion that costs should be allocated based on a guess as to how much time a dozen or so employees will take to perform various functions. The problem is compounded by the fact that the Companies admitted that they do not track any specific costs associated with the various functions that the Gas Transportation Services employees perform. (*See, e.g.*, IGS Cross Ex. 11 (the Companies' Responses to Data Request IGS 3.05; Tr. 674:4-8.)

Of course, it is important that these costs be accurately allocated both between the sales and transportation customers, as well as within the transportation customer classes. IGS witness Mr. Parisi underscored the need for accurate identification of the cause of *all* costs:

If a full unbundling of the costs occurs, it will be necessary to ensure not only the Choices For You customers are properly treated, but also that the larger transportation customer charges will be examined to ensure they are not paying twice for costs, or paying for costs they are not creating. Although IGS is focused on the residential and small commercial markets for purposes of this testimony, the competitive market works best when no customer group is forced to subsidize another customer group.

(IGS Ex. 2.0 at 19:460-466.) Absent charging all eligible customers for both Choices For You and generally applicable administrative fees, this additional detail -- which is plainly not available in the record -- should be collected, developed and presented by the Companies. (*See, e.g.,* Tr. at 680:6-684:16.)

IGS respectfully requests that the Commission require the Companies to have a coherent, consistent and pro-competitive approach to the collection of their administrative fees. As the Commission recognized in the Companies' 2009 Rate Case, the Nicor Gas model for a small volume transportation should be followed unless there is a specific reason that the Companies cannot implement that model. The most straightforward solution would be for the Commission to direct the Companies to collect all administrative fees from all eligible customers, as is done with the Nicor Gas program. The Companies have not presented evidence to suggest that the Nicor Gas approach to the collection of administrative fees is unworkable, and have not presented any explanation as to why they failed to follow the Commission's directive. If the Commission chooses not to accept this proposal, IGS respectfully requests that the Commission direct the Companies to present a detailed cost allocation study for all of its administrative costs, and develop a credit to prevent Choices For You customers from being double charged.

## **2. Purchase of Receivables (withdrawn)**

In Direct Testimony, IGS recommended that the Companies implement a Purchase of Receivables program in the present dockets as a remedy to the unequal treatment by the Companies of sales customers and Choices For You customers. (*See* IGS Ex. 1.0 at 4:83-5:94, 44:1050-1062.) However, based on several factors, IGS has withdrawn its recommendation regarding implementation of a Purchase of Receivables program in these dockets. (*See* IGS Ex. 2.0 at 13:301-313.) Although IGS has not changed its position regarding the benefits of

Purchase of Receivables, as a result of the withdrawal of its recommendation, the issue of Purchase of Receivables is no longer before the Commission and requires no Commission decision in this proceeding. Accordingly, because the initial Purchase of Receivables recommendation is no longer at issue in this case, IGS instead urges the Commission to focus on inequities in the charging of administrative fees detailed above. (*See id.*; IGS Ex. 2.0 at 13:317-14:325.) As IGS witness Mr. Parisi succinctly explained: “Because IGS is no longer recommending a POR program (and the Companies do not appear interested in instituting one on their own), it is critically important to remove charges that are based on inaccurate cost allocation..” (IGS Ex. 2.0 at 14:339-341.)

## **XII.**

### **CONCLUSION**

The Companies’ current approaches to generally applicable administrative fees, Choices For You administrative fees, and warranty products lead to improper subsidies and market barriers the fly in the face of the Commission’s policy favoring competition. A few specific, straightforward changes, however, will greatly ameliorate the identified market imbalances.

WHEREFORE, IGS respectfully requests that the Commission enter an Order:

1. Requiring the Companies to collect Choices For You administrative fees (the Companies’ Aggregation Charges) from all eligible customers.
2. In the alternative, requiring the Companies to undertake detailed cost-causation analysis of the administrative fees to all customers and the Gas Transportation Services allocation factors;
3. Requiring the Companies to adjust treatment of Large Volume Transportation customers’ fees to mirror changes to Choices For You customers.
4. Accepting Staff’s proposal to open an investigation into the Companies’ practices supporting their affiliate and its warranty product;
5. Requiring the Companies to provide access to their billing and solicitation assets to non-affiliates on a non-discriminatory basis; and

6. Granting any additional relief that the Commission determines to be in the interests of justice.

Respectfully submitted,

**INTERSTATE GAS SUPPLY OF ILLINOIS, INC.**

By: /s/ Christopher J. Townsend  
One Of Its Attorneys

Christopher J. Townsend  
Christopher N. Skey  
Michael R. Strong  
DLA Piper LLP (US)  
203 N. LaSalle Street, Suite 1900  
Chicago, IL 60601  
christopher.townsend@dlapiper.com  
christopher.skey@dlapiper.com  
michael.strong@dlapiper.com